

AK

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

SHERMAN SWOPES,
DEFENDANT,

v
UNITED STATES OF AMERICA,
RESPONDENT.

CASE # 21 - CV - 4796

Chief Judge
Rebecca R. Pallmeyer

DEFENDANT'S RESPONSE TO THE GOVERNMENT'S REPLY
TO DEFENDANT'S TRAVERSE.

COMES NOW, Sherman Swopes, A prose Litigant who respectfully moves this Honorable Court to grant the relief sought, And reduce the defendants sentence to "TIME SERVED". IN Keeping with the Supreme Courts holding in United States v. Davis, 139 S.Ct. 2319 (2019), Which renders the defendants 18 U.S.C ss 924 (c) conviction unconstitutional And Void.

Petitioner, Sherman Swopes, Assert that for the Court to Leave the ss 924 (c) conviction And sentence As it Now stands. Would result in A Fundamental Miscarriage of Justice.

And the Miscarriage of Justice exception to procedural default

FILED

APR 20 2022 JK

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

And untimely filing is limited to habeas petitioners like Mr. Swopes who can show that a constitutional violation has resulted in the conviction of one who is actually innocent.

Under this exception a petitioner may establish a procedural "gateway" permitting petitioner review of defaulted claims, if he demonstrates actual innocence. The evidence of petitioner's innocence is so strong given the United States v Davis, 139 S.Ct. 2319 (2019) that this honorable court cannot have confidence in the outcome of the trial given the constitutional error in the Davis case. Therefore, petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims.

Petitioner asserts that he has a credible claim of actual innocence supported by new reliable evidence of a constitutional error, which was not available, nor has it been presented in trial. Since the case of constitutional wasn't decided until 2019 by the Supreme Court.

The newly discovered evidence need not be newly available, just newly presented.

That is evidence not presented in previous proceedings, due to unavailability. And this holding create a colorable claim of actual innocence.

And defendant Swopes is innocent of the charge for which he is incarcerated, as opposed to mere legal innocence as the result of legal error.

Petitioner Swopes can show that he is actually innocent; and a miscarriage of Justice will occur if the Honorable Court fails to consider the claims presented. *Schlup v. Delo* 513 U.S. 289, 327, 130 L.ed 2d 808, 115 S.Ct 851 (1995). (citing *Murray v. Carrier*, 477 U.S. 478, 496, 91 L.ed 2d, 397, 106 S.Ct. 2639 (1986)).

Under this exception, a petitioner may establish a procedural gateway, permitting a review of defaulted claims, if he demonstrates Actual Innocence *Schlup*, 513 U.S. at 316 note 32.

Petitioner asserts that no reasonable juror would have found him guilty beyond a reasonable doubt of the "924 (c)", nor would he even been charged with it in light of the David decision.

And that the Court should assess the probative force of the newly presented evidence, in connection with the evidence of guilt adduced at time.

This Honorable Court has already conceded this same identical claim and issue in the Petitioner's Habeas Petition granting the Motion for Israel, who has been reunited with his family a free man.

This seems to be an extraordinary case given the degree of resistance being put up by the Assistant United States Attorney in opposition to the petitioner obtaining Justice, fairness and his Freedom.

Especially, since it cannot be controverted that a Constitutional Violation has transpired that resulted in the conviction of someone who's actually Innocent.

A Federal Habeas Court may grant a writ of Habeas, even in the Absence of a showing of Cause for procedural default.

CONCLUSION

Petitioner Sherman Swopes, swear and attests that he is eligible for the relief he seeks. And that prays the Honorable Court will grant him relief and what ever it deems Just and Fair.

Sherman Swopes
Respectfully Submitted
Sherman Swopes
40487 - 424
FCI PeKin
Po. Box 5000
PeKin, Illinois
61555-5000

This 12th day of April 2022

SWORN AFFIDAVIT

I, Sherman Swopes Swear and attest that the
aforegoing is truthful and factual to the best of
my knowledge and recollection. And that I am cognizant
that any false statement could result in a criminal
prosecution for Perjury.

Sherman Swopes
Respectfully Submitted
Sherman Swopes
40487-424
FCI - PeKin
Po. Box 5000
PeKin, Illinois
61555-5000

This 12th day of April 2022

CERTIFICATE OF SERVICE

I, SHERMAN SWOPES, certify that I have placed in the internal mail system at FCI-PeKin, a true copy of the foregoing, Attached with First-Class U.S. Postage. Addressed to the United States Attorneys office.

For the Northern District of the U.S District Court of Illinois. This 12th day of April 2022.
219 S. Dearborn, Street Room #500
Chicago, Illinois
60604

Sherman Swopes

Respectfully Submitted

Sherman Swopes

40487-424

FCI - PeKin

P.O. Box 5000

PeKin, Illinois

61555-5000

This 12th day of April, 2022

Sheaman Steves ID# 40487-424
Federal Correctional Institution
P.O. Box 5000
Peekin, IL 61555

RECEIVED

2022 APR 20 AM 8:29

PN



04/20/2022-2



Circuit of Clerk
219 S. Dearborn ST
Chicago, IL 60604